IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8579 OF 2005

Rameshchandra Thakurdas Mehta
and anr. ..Petitioners

Vs.

Shakuben Jaswantlal Kansara
and anr. ..Respondents

Mr. Bharat Joshi for petitioners.
Mr. A.H. Palekar for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : April 05, 2007.

P.C.:

1. Heard Mr. Joshi the learned counsel for the petitioners and Mr. Palekar the learned counsel for the respondents.

2. The petitioners have filed R.A.E. Suit No.375/541 of 2003 for seeking decree of eviction under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short the Rent Act. While the said suit was pending, Interim Notice No.3674 of 2004 was taken out seeking two fold amendment. In the first instance, the plaintiffs sought leave to delete the

ground of eviction under Section 16(1)(g) and at the second instance they sought to incorporate the ground for eviction under Section 16(1)(b) of the Rent Act. This application has been rejected by the impugned order dated 1/4/2005 on the following grounds:-

(a) The plaintiffs have not made out the ground of nuisance as set out under Section 16(1)(c) of the Rent Act.

(b) If the ground of bona fide requirement is lost then the suit is not triable by the court which rejected the amendment application and it will have to be transferred to some other court and the plaintiffs, therefore, may file a fresh suit.

(c) The prayers under Sections 16(1)(b) and 16(1)(c) of the Rent Act are totally different than the averments originally made in the plaint for eviction under Section 16(1)(g).

3. The amendment application and the schedule

attached thereto for the proposed amendment as were presented to the trial court in Interim Notice No.3674 of 2004 do not specifically state as to when the cause of action for seeking decree under Section 16(1)(b) of the Rent Act arose, though in his oral arguments the learned counsel for the petitioners sought to state that the constructions alleged by the plaintiffs were erected during the pendency of the suit. Such a bald statement made across the bar cannot be accepted to set aside the impugned order by exercising the supervisory powers under Article 227 of the Constitution. However, the observation made by the trial court that the suit will not be maintainable on amendment and it will have to be presented to another court do not satisfy the requirement of law. Transfer of suit is an administrative order and if the court concerned, after allowing the amendment, finds that in view of the administrative assignment it is not authorised to deal with the amended suit, it will have to pass an order to present the suit or assign it to the appropriate court.

4. I have also perused para 8(a) of the plaint in

RAE Suit No.375/541 of 2003 and there is a clear averment for eviction under Section 16(1)(c) of the Rent Act. However, there is no prayer made out for allowing the suit on the same ground.

5. Under these circumstances, it may be advisable for the plaintiffs to file a fresh application before the court below giving better particulars for the proposed amendments under Sections 16(1)(b) and 16(1)(c) of the Rent Act and the same will have to be considered by the trial court on their own merits. However, it will not be permissible for the trial court to reject such amendment on the ground that the suit will not be maintainable before it or cannot be tried by it due to administrative order of assigning the judicial work.

6. Hence the petition is disposed with liberty to the petitioners to apply afresh seeking amendments by providing better particulars and if such an application is made within a period of four weeks from today, it be considered on its own merits.

(B.H. Marlapalle,J.)